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# **The Tragic Bazooka Accident at Los Alamos on July 14, 1962**

Cary B. Skidmore  
Los Alamos National Laboratory  
September 21, 2017

## **Introduction**

In recent years the Laboratory has made information (documents, photographs, and perspectives) regarding the occupational explosives accidents that killed seven men in the late 1950s more accessible to the public. While pursuing this effort, we were reminded of similar tragedies that occurred to children of the community. The purpose of this paper is to make information that has come into our hands more available to the public regarding these accidents. Following this introduction, a brief synopsis is provided for each accident. The appendices contain source documents for the 1962 accident that are not generally available.

The community of Los Alamos, New Mexico was born out of a military post created to support the secret Manhattan Project during World War II. Security was provided by military police and some training exercises were conducted using live ordnance. In two instances unexploded ordnance (UXO) from this era was found “in the field” by residents hiking in the local area and brought into town. Tragically, handling these “bazooka” rounds as “dud” munitions resulted in death for one child and injury to several others.

The first accident occurred on Saturday, September 6, 1947, which resulted in injuries to two boys, ages 5 and 12. The second accident occurred on Saturday, July 14, 1962 and resulted in the death of one five-year-old boy, and injuries to four other children, ages 6 to 10 years-old. The latter accident is the primary focus of the paper.

## **The 1947 Accident<sup>1</sup>**

The most detailed information regarding the 1947 bazooka accident comes from the Friday, September 12, 1947 edition of a newspaper, The Los Alamos Times.<sup>2</sup> Some additional details are provided by the recollection of a sister of one of the victims as published in the book, Children of Los Alamos: An Oral History of the Town where the Atomic Age Began.<sup>3</sup> I use the contemporary newspaper account as my primary source.

Apparently some teenage boys found a UXO item on an abandoned firing range one year prior to the accident and believed it to be a dud. Another account claims that it may have been a

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<sup>1</sup> Donnie Marchi, one of the victims, is acknowledged for providing significant information regarding this accident.

<sup>2</sup> Republished by *The New Mexican* after the 1962 accident, “Similar Shell Mishap Remembered in LA,” Thursday, July 19, 1962, p. 11.

<sup>3</sup> ©1995 by Katrina Mason, Twayne Publishers, Chapter 8 “Teenagers’ Perspectives,” Betty Marchi Schulte.

“family souvenir.”<sup>4</sup> On the day of the accident, “two boys were playing in the yard in front of 686 25<sup>th</sup> street when some youths who were not named attempted to discard the shell into a garbage can from an upstairs window. The shell missed the can, landed approximately three feet from the two boys and exploded. Several other children had just left for home.” A clipping from the Los Alamos Times article has three pictures, one of each of the boys and one of the hole in the ground near the garbage can. These are pasted below.



**WHEN A DUD BAZOOKA EXPLODES** it leaves a mess in its neighborhood. The projectile which Saturday critically injured Leroy Chavez, 12, drove a hole into the earth (as pictured in the foreground) approximately 16 inches deep and about 3½ inches across. The shell, which missed the garbage can into which it was allegedly aimed by unnamed persons, caved in the sides of the can and punctured it with pieces of shrapnel. The windows directly behind the garbage can were broken. Across the street, a piece of shrapnel from the shell went through a window barely missing a person at the stove. The Chavez youngster and a playmate, who was slightly injured, were within five feet of the blast which occurred in front of 686 25th street. Picture by Doug Alcock.

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<sup>4</sup> First Report of Investigation: Explosion of Bazooka Shell, 3144 Gold Street, Los Alamos, New Mexico, July 14, 1962, Part 1, Exhibit H, letter from Bernard W. Detlefsen to James P. Hogan dated August 5, 1962.





The two injured boys were Leroy Chavez, age 12, and Donald “Donnie” Lewis Marchi, age 5. Leroy received a compound fracture to one leg and serious shrapnel wounds to the abdomen. Donnie suffered less serious ankle and head wounds, and temporary hearing loss. “Young Marchi, who was wearing a straw hat, had just returned to the porch when the blast occurred. The explosion knocked him off the porch and shrapnel which penetrated the brim of his hat in several places, carried it to the apartment’s second floor porch.”

After the accident, a call was made for residents to “turn in immediately for disposal all hand grenades, bazookas, anti-aircraft shells or any other war missiles of an explosive nature they may have in their possession.” Apparently, no effort was made to clear the UXO from the abandoned firing ranges until after the more serious 1962 accident.

### **The 1962 Accident**

My primary source of information for the 1962 accident is “First Report of Investigation: Explosion of Bazooka Shell, 3144 Gold Street, Los Alamos, New Mexico, July 14, 1962, Part 1” and “Report of Investigation: Explosion of Bazooka Shell, 3144 Gold Street, Los Alamos, New Mexico, July 14, 1962, Part 2.” These are provided in the appendix.

On the afternoon of Saturday, July 14, 1962, John Reilly, his wife, Sophie, their five-year-old daughter, Ann, and their ten-year-old nephew, Frank Taccetta, who was visiting from out of town went to explore the “Indian ruins” and gather pottery sherds atop the mesa on the north side of lower Pajarito road near White Rock, New Mexico. Until March 14, 1960, this area had been closed to the public for security reasons. Then a new, paved road was built and by July 11, 1962 public passage along the road was permitted.

While the Reilly entourage was gathering pottery sherds they also encountered many UXO items and decided to keep one that they believed to be harmless. When they returned home, Frank showed “his souvenir” to four children in the neighborhood. Although it had survived at least four impacts prior, when Frank dropped it one more time it exploded. The victims and major injuries are listed below.

1. Jimmy Ray Williams, age 5, killed.
2. Gary Dahlby, age 6, both legs amputated below knees.
3. Toni Roberta Preciado, age 6, partial amputation of right foot.
4. Frank Taccetta, age 10, both legs amputated below the knees.
5. Victoria Lujan, age 6, right leg amputated below the knee.

It is worth noting that less than three years prior to this accident, Victoria’s grandfather, Sevedeo Lujan, was killed in another tragic explosion at the S-Site Burning Ground of Los Alamos Scientific Laboratory (October 14, 1959). The bazooka accident heaped a double tragedy upon the Lujan family.

Many things changed at the Laboratory regarding the manner of conducting explosives operations after the Burning Ground accident. Similarly, following the 1962 tragedy vigorous actions were taken to prevent future accidents of this nature. An effort was made to locate all areas that might have been used for the firing of explosives munitions. These were identified, signs were posted, and the areas cleared of UXO items as much as practical. School children were considered to be the most at risk and they were trained on how to recognize UXO items, to understand the associated hazards, how to respond if they encountered them.

Some pictures appeared in local newspapers and are pasted below. The Los Alamos Historical Society is gratefully acknowledged for sharing their file of newspaper clippings on this accident.



Timmy Ray Williams



Victoria Lujan



Toni Preciado



Gary Dalby

*The New Mexican*, July 16, 1962, p. 1



Toni Preciado



Frank Tascetta

*Albuquerque Journal*, July 16, 1962, p.1



FRAGMENT — Shown examining a brass alloy fragment of the bazooka shell that exploded in a residential front yard last Saturday at Los Alamos are, (left to right) Jimmy Johnson, Charles Caldwell, T. R. Sanchez and Jeff Scott. The men dug 27 inches into the ground at the point of the explosion before finding this fragment. The five children were gathered around this point when one dropped the shell, exploding it. (Gerry Machovec photo)

*Rio Grande Sun*, July 19, 1962

Legal action followed in the aftermath of the explosion. *The New Mexican* newspaper reported on Wednesday, October 17, 1962: "Parents of four Los Alamos bazooka shell victims filed \$1,303,500 in lawsuits against the United States government Tuesday." The government paid a settlement of \$350,000 and then sued John Reilly for that amount. The first paragraph in a suit filed in the United States Court of Appeals Tenth Circuit on November 9, 1967<sup>5</sup> includes these words:

"This is a suit by the government for indemnity or in the alternative, contribution, for the cost of settling five tort actions brought against the United States...The tort actions were instituted by representatives of the five minor children seeking total damages of \$2,210,500 for injuries and death caused by the accidental explosion of a 2.36-inch rocket launcher round or "bazooka

<sup>5</sup> 385 F.2d 225, United States of America, Appellant v. John M. Reilly, Appellee, No. 9476, United States Court of Appeals Tenth Circuit, November 9, 1967.

shell.” The amount paid in settlement was \$350,000. The government looks to appellee John M. Reilly for indemnity on grounds that his negligence was the sole cause of the accident, or that his negligence was primary and active while the negligence of the United States was merely secondary and passive.”

#### List of Appendices

1. First Report of Investigation: Explosion of Bazooka Shell, 3144 Gold Street, Los Alamos, New Mexico, July 14, 1962, Part 1
2. Report of Investigation: Explosion of Bazooka Shell, 3144 Gold Street, Los Alamos, New Mexico, July 14, 1962, Part 2
3. Memorandum to distribution from Charles C. Campbell, Area Manager, Los Alamos Area Office, AEC, “Investigation of Accident in Los Alamos on July 14, 1962,” July 16, 1962
4. Memorandum to Charles C. Campbell, Area Manager, Los Alamos Area Office from James P. Hogan, Counsel, Los Alamos Area Office, “Possible Litigation from Bazooka Explosion,” July 24, 1962
5. Memorandum to Charles C. Campbell, Area Manager, Los Alamos Area Office from James P. Hogan, Counsel, Los Alamos Area Office, “Report of Investigation Concerning Bazooka Explosion,” August 14, 1962

## **Appendix 1**

**First Report of Investigation: Explosion of Bazooka Shell, 3144 Gold Street, Los Alamos, New Mexico, July 14, 1962, Part 1**



FIRST REPORT OF INVESTIGATION

EXPLOSION OF BAZOOKA SHELL

3144 Gold Street  
Los Alamos, New Mexico  
July 14, 1962

PART 1

The Committee appointed by the Area Manager on July 16, 1962, to investigate the explosion which occurred July 14, 1962, in Los Alamos, is not yet able to make a complete report on all phases of its task. Because it believes that some weeks may pass before all efforts to locate former firing ranges are exhausted and a report concerning them can be prepared, the Committee decided that it should make this first report which is complete so far as the particular explosion is concerned.

Between 6:25 and 6:30 p.m. on Saturday, July 14, 1962, near Apartment A at 3144 Gold Street, Los Alamos, New Mexico, (the exact point is marked by the hole in the ground depicted in a photograph attached to this report as Exhibit A) an explosion occurred which resulted in the death of one child and the injury of four others. The children's names, their ages, addresses, parents or near relatives, and their injuries, are indicated below:

1. Jimmy Ray Williams, age 5, 3150-A Trinity.  
Father: Frank Williams, 3150-A Trinity.  
Killed.
2. Gary Dahlby, age 6, 3144-D Gold St.  
Father: Orville Dahlby, 3144-D Gold.  
Injured. Both legs amputated, shrapnel in hip  
and pelvis, injured testicle.
3. Toni Roberta Preciado, age 6, 3144-B Gold St.  
Father: Ramon Preciado, 3144-B Gold St.  
Injured. Partial amputation of right foot, other  
relatively minor injuries.
4. Frank Taccetta, age 10, 3908 Shepard Rd., Albuquerque.  
Father: Agapito Abeyta, 3908 Shepard Rd.,  
Albuquerque.  
Uncle: John M. Reilly, 3150-C Trinity Dr., Los  
Alamos.  
Injured. Both legs amputated.
5. Victoria Lujan, age 6, 3144-A Gold.  
Father: Sevedeo Lujan, Jr., 3144-A Gold.  
Injured. One leg amputated.



More detailed and precise statements of the survivors' injuries are contained in the excerpt from the hospital's emergency room records attached as Exhibit B. A written summary of injuries has been requested from Dr. Howard L. Wilson, attending pediatrician, but he has not yet responded.

On the day of this report's preparation, August 13, 1962, Frank Taccetta and Gary Dahlby were still under the care of Dr. Howard L. Wilson in the Los Alamos Medical Center. Toni Roberta Preciado and Victoria Lujan were discharged from the hospital on July 27 and August 3, 1962, respectively.

In the Committee's opinion the following are the major facts concerning the accident:

At about 2:30 p.m., July 14, 1962, Mr. John M. Reilly, age 29, with his wife Sophie, age about 26, and his daughter Ann, about 5 years old, left their home at 3150-C Trinity, Los Alamos. They took with them Mr. Reilly's nephew and guest, Frank Taccetta, age 10, one of the children later to be injured. They went east on Pajarito Road, using the newly-paved roadway, eventually stopping at a point about 1.2 miles east of Pajarito Site (TA-1C). Mr. Reilly, who was driving the car, went down the canyon almost to State Highway #4 and back, looking for any prohibitory signs. The purpose of the trip had been to have a picnic, to look at Indian ruins, and to gather pottery; finding no "keep out" or other signs, Mr. Reilly stopped where he did because of the presence of visible Indian ruins in the cliffs on the north side of Pajarito Canyon at that point.

Signs on posts had years ago been installed along the north edge of the old Pajarito Road, facing south, and carrying the message: "DANGER - KEEP OUT - UNEXPLODED SHELLS". At this time they were badly weatherworn, and most of them had fallen to the ground, post and all. Because of this, and because the Reilly group were on the new road to the north of the old road, they observed no signs. (A photograph of one of the old signs is attached as Exhibit C.)



Mr. Reilly and his companions left their car, walked across the canyon floor north of the road, and climbed the canyon side. The members of the group did not stay together while on the cliff, and their exact locations with respect to one another during their activities there are not known. It is clear, though, that while Mr. Reilly was on the topmost of the ledges or benches along the face of the cliff, he picked up a round of 2.36 inch rocket ammunition, commonly called a "bazooka shell". The shell was exposed on the surface of the ground, not buried. Many rocket motors were clearly visible, and Mr. Reilly knew that he was in some kind of former munitions impact area.

Exactly why that particular round, which later was taken home by Mr. Reilly, came to his attention is not clear. Possibly Ann or Sophie Reilly called attention to it, and it did have a "head", the bulbous front end, which the other rounds lacked. The Committee believes that the round was chosen because it was the most complete one seen..

The explosive head on the shell Mr. Reilly took was substantially intact, although the ogival windshield was battered, flattened along part of its length, and split open. The battered condition of the windshield was the result of its impact with the cliff after the round was launched. A photograph of drawings made by Mr. Reilly on a blackboard is attached as Exhibit D. The two drawings depicted in the marked corner of Exhibit D are a side view of the round and a top view of the ogive as recalled by Mr. Reilly. The drawings are not consistent with the actual construction of bazooka rounds nor with the actual facts of the explosion.

Mr. Reilly examined the shell when he picked it up. (See the fourth paragraph of the second of the two signed statements given by Mr. Reilly to the Los Alamos Police Department, copies of which are attached as Exhibit E.) In subsequent interrogation of Mr. Reilly on July 19, 1962, the Committee learned that he peered into the opening in the head and inserted a finger after bending back a piece of metal; he



could neither see nor feel anything that was significant to him. He held it with both hands out in front of him and glanced, with both eyes open, along its length, receiving an impression that he could see through it.\* Concluding that the shell was harmless, Mr. Reilly carried it with him for three or four minutes and his nephew, Frank Taccetta, also carried it for an undetermined but brief time. While it was carried by Mr. Reilly and Mr. Taccetta, the shell received no violent treatment, but it was inconvenient to carry along with the pottery shards Mr. Reilly also had, so he threw it to the base of the cliff to be picked up later. The shell probably struck one or more rocks when it fell, and the vertical distance of its fall was between 30 and 50 feet. See Exhibit F, a photograph of the general section of the cliff. Some time later the party left the cliff face. At the base of the cliff Frank Taccetta picked up the same shell,\*\* and either he or Mr. Reilly carried it to the car and put it in the trunk along with Indian pottery shards which the entire group had gleaned. There was no further examination of the shell and probably no discussion of it.

The Reillys and Frank Taccetta returned to 3150-C Trinity at an undetermined time prior to 6:30 p.m. (See Exhibit G, a map showing the material locations.) Each removed pottery shards from the car trunk and carried them upstairs to the Reillys' apartment, Frank Taccetta being the last of the four to remove shards and to mount the steps. Mr. Reilly did not tell his nephew to close the trunk lid, which action would have locked it. The shell was left in the trunk of the car, and the trunk lid was not closed.

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\*Because the round could not possibly have been pierced through its length so as to pass light, the Committee believes Mr. Reilly actually only glanced through the shrouded fins.

\*\*By interrogation of Mr. Reilly and Frank Taccetta on July 19 and July 27, 1962, respectively, the Committee satisfied itself that the shell examined on the cliff by Mr. Reilly was the one brought home by him.

After the members of the Reilly party washed their pottery shards in Reilly's apartment, Frank Taccetta, alone, left the apartment. He went down to the car, took out the shell, and again mounted the steps to the second floor of 3150 Trinity. From the second floor level on the outside stairway, Frank Taccetta dropped the shell which landed on its side on the dirt below. He then descended the stairway, picked up the round, and crossed Gold Street with the purpose of showing the shell to the four other children whose names are stated above. He did show the shell, as his souvenir, to the other children, and dropped it on the sidewalk once, its nose striking first. Then, with the other four named children present, Frank Taccetta dropped the shell again; it struck nose first on the dirt in front of 3144 Gold, and exploded. The results are indicated above.

As antecedents to the explosion described above, the Committee believes the following are facts:

The area in Pajarito Canyon where Mr. Reilly obtained the shell was used by members of the Army, probably the Provisional Military Police Battalion, as a range for firing 2.36 inch rocket launchers (bazookas) at some undetermined time prior to the end of 1947. See Exhibit H, a copy of a letter from B. W. Detlefsen, Capt., USA, (Ret) 5 Aug. 1962, with attached photograph. After its use of the area for that purpose, the Army probably removed the duds that could then be found. Warning signs were implaced, as indicated above, along the north side of the old Pajarito Road, but at least in recent years they were not maintained. No later efforts (than those of the Army) to "clear" the impact area are known to have been made prior to July 14, 1962, when the accident happened.

Until March 14, 1960, the Pajarito Road was closed to the public for security reasons; there were a fence and gate in the east end of the canyon, and a security station at the west end of the road. Removal of those barriers made the road available for general public use, although probably very little use was made of the section east of TA-13 because of its bad condition. In August 1961 the construction of a new road in the floor of the



canyon, running eastward from Pajarito Site (TA-1C) to New Mexico State Highway #4 was started. The course of the new highway lies to the north of the old road, and thus to the north of the old line of warning signs.

In 1960, Mr. E. G. McAndrew, safety engineer, Project Support Branch, inspected the route through the canyon in anticipation that it would be opened to public passage. He made a similar inspection in 1961 to assure the safety of road construction employees. Mr. McAndrew's inspection in both cases was confined to the floor of the canyon and did not extend up into the cliff faces.

The Committee has no information indicating that a safety inspection was conducted before the construction of the electric power line which now crosses Pajarito Canyon at the edge of the bazooka impact area. (See Exhibit F.) No records of an inspection could be found, and the Committee is informed by Mr. W. C. Courtright, who was an AEC safety engineer at the time the transmission line was built, that no inspection was conducted.

Subsequent to Mr. McAndrew's 1961 inspection, the new road construction started in July, 1961. During the construction period signs excluding traffic from the new roadway were maintained until July 11, 1962 when the paving work was substantially finished at which time the signs were removed. For all practical purposes the new road was available for general public use beginning no later than July 11, 1962. However, the road construction had still not been entirely completed on July 14, 1962, the date of the accident under investigation, at which date one of the things remaining to be done was the erection of roadside signs forbidding trespass. In the normal course of events, the signs used would have the ordinary "UNITED STATES PROPERTY, NO TRESPASSING" type, rather than signs warning of explosives.

The Committee finds the following concerning the shell:

The shell which exploded at 3144 Gold Street about 6:30 p.m., July 14, 1962, was the shell John M. Reilly removed from Pajarito Canyon and brought into town. Although its ogive and tail were

were battered to some degree, it was a substantially intact 2.36 inch rocket round with its explosive charge substantially undamaged and unaffected by its launching and by its subsequent exposure to years of weather. The best evidence of this is afforded by the fact of the explosion and in particular by:

1. The size and shape of the hole it made in the ground, four or five inches in diameter at the top and approximately 27 inches deep.
2. The fact that an elongated teardrop shaped "slug" of copper was found by Jimmy Johnson in the bottom of the hole. (See Mr. Johnson's statement given to the Los Alamos Police Department on July 20, 1962, and a supporting statement given the same day by Jeff L. Scott, both attached as Exhibit I.)
3. The fragments gathered at the scene of the explosion.

Capt. B. R. Michael, an explosive ordnance disposal officer of the United States Army assigned to the Explosives Division, Atomic Weapons Training Group, Field Command DASA, Sandia Base, told the Committee that a copper "slug" of the kind found by Mr. Johnson is typical of, and found only after, the explosion of a substantially intact bazooka charge, detonated from its base as it was designed to be detonated. He identified the piece of metal mentioned as such a "slug" and identified the other fragments as those of a bazooka shell. In addition, Frank Taccetta told two members of the Committee that before the explosion he saw a cone in the shell head. (More precisely, he said that what he saw through the split in the ogive looked like the top of an ice cream cone without ice cream.) This is typical of the shaped charge in the 2.36 bazooka shell.





Exhibit A

**SECURITY PHOTO LAB.**

**DATE TAKEN** JUL 15 1962

**RE-ORDER BY #** P.D. #3

**PHOTO TAKEN BY** J. D. SHORES

**CLASSIFICATION**

C O P Y

Victoria Lujan - J. C. Dotson, M.D.

Blast injuries to lower extremity with amputation of right leg below the knee; skin graft to stump. Aspiration pneumonia.

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Gary Dahlby - J. C. Dotson, M.D.

Blast injuries to lower extremities with below knee amputation, bilaterally. Penetrating shrapnel wounds to pelvis; fracture of pelvis.

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Toni Presciado - W. R. Oakes, M. D.

Multiple avulsions and laceration from shrapnel to right thigh, heel and foot with amputation of 5th toe, 4th & 5th metatarsals and possible amputation of 4th toe, rt. foot.

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Frank Tacetta - W. R. Oakes, M.D.

Multiple shrapnel wounds with bilateral below knee amputations.

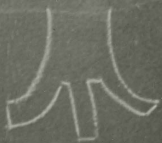
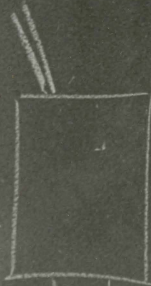




Exhibit C



**SECURITY PHOTO LAB.**  
DATE TAKEN JUL 15 1962  
RE-ORDER BY # 14896  
PHOTO TAKEN BY J. D. SHORES  
CLASSIFICATION -----





**SECURITY PHOTO LAB.**

DATE TAKEN JUL 27 1962

RE-ORDER BY # 14930

PHOTO TAKEN BY J. D. SHORES

CLASSIFICATION

At approximately 2:30 PM July 14 1962 ( <sup>SATURDAY</sup> Sunday ) Mr. and Mrs John Reilly with daughter and Nephew Frank Taccetta went on a picnic. They left there home at 3150-C Trinity drive, proceeded across the bridge over Los Alamos Canyon to Pajarito Road. They passed Pajarito site and then proceeded down the newly paved road <sup>t</sup>owards White Rock. Approximately half way between Pajarito site and White Rock the Reilly Family and company stoped to look thru some caves. The cave area was approximately 80 feet above the street level so a small climb was necessary. Upon arriving at the cave area they started to pick up small bits of broken pottery. Also noticed in the area were small fragments of what were obviously world war II bazooka shells. One shell had been picked out of the many laying around. The one chozen to be taken home was a smashed one which looked like a truck had run over it. The Reilly family and company then decided to return to there car and go home. Because this shell,...which was beleived to be a dud was rather clumsy to carry they threw it down from the cave area, the shell bounced and fell some more. Upon arriving at the car they threw it in the trunk ( of the car ) and proceeded home making one more stop to pick up some potery. They then went home. After arriving at home they removed the potery to there apartment and started to clean it up. Frank Taccetta, the Nephew who was visiting the Reillys was finished first. He then went down stairs to play with the children. Unknown to the Reillys the Nephew had left the trunk of the car open and retreived the so-called dud from the car. A short time later an explosion occured in which many children were injured and one boy died. All were taken to the hospital.

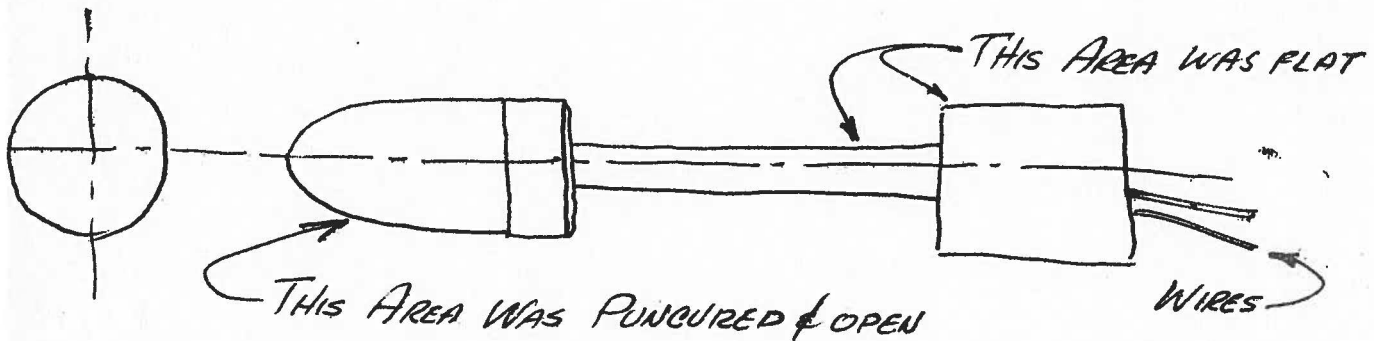
I certify that I have read the foregoing statement consis-

a true and correct transcrip of the oral statement made by me by to officers, whom I know to be members of the Los Alamos Police Department. The foregoing statement was made voluntarily by me, with out threat or promise, and I further declare that I shall be willing to appear as a witness in any court action that may be deemed necessary. I have signed ~~my~~ full signature to page number two (2) and have initiled each page numbered from one (1) to two (2)

John M. Leilly  
( Signature of person making statement )

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_



ENTIRE SHELL WAS FLATTENED.

Statement of John M. Reilly, W, M, 29, dob 1/28/33, Married  
Occupation: Designer, U of C Business Phone: 7-4291  
Residence Address: 3150-C Trinity Phone: 2-288E

At approximately 2:30 p.m. on Saturday, July 14, 1962 I, John M. Reilly, with my wife and 5 year old daughter and my nephew, Frank Taccetta, age 10, left my home at 3150-C Trinity, Los Alamos, to go on a picnic. We drove South across the bridge and turned East on Pajarito Road.

We passed Pajarito site and continued East on Pajarito Road on the newly paved portion of the road to White Rock. About a mile East of Pajarito Site we stopped along the road, parking the car on the South side of the highway well off the roadway. The car was still headed East on the South side of the road. We got out of the car and crossed the highway on foot to the North side of the highway, then walked across the bottom of the canyon to some cliffs about 100 yards North of the highway. We went to these cliffs to explore some Indian ruins in the cliffs. This was the purpose of our trip, as we were taking my nephew to explore the Indian ruins. He is from Albuquerque and was in Los Alamos visiting us for a short time. He had been visiting us for one week.

We saw no signs of any kind as we went over this area from the car to the cliffs, nor did we see any signs on the South side of the highway.

As we were exploring the caves in the side of the cliff I saw an old shell of some kind lying on the ground near the entrance to one of the caves. I did not recognize the shell as to its type, and did not really know what it was. I picked up the shell to examine it--the thought struck me at first that it was some kind of home-made bomb of some kind. As I examined it, however, I saw that there were some welded portions on it, and then felt that it was probably some kind of bomb probably used for practice during the early part of World War II. I examined it further and found that it was completely rusted over. Both ends had been flattened as though it had been run over by a truck of something of that nature. I looked through one end of the piece and could see clear through it, so I felt that it was harmless. After assuring myself that it was harmless I carried it with me as we continued on our exploration of the Indian ruins.

I had been doing most of the walking along the cliffs while my wife and the children sat nearby. When we were ready to return to the car I threw the shell down the side of the mountain from where I was in the cave area. It went through the air for about 60 feet, hit a rock, and then bounced on down the mountain, striking the ground and other rocks as it went down. When I got down the mountain I picked it up again and carried it to the car and threw it in the trunk of the car.

After finding the first shell I noticed numerous other portions of shells of the same type as I continued along the side of the mountain. I saw others that appeared to be much more intact than the one I had picked up, as well as many others that were without the "head" consisting only of the pipe and tail section. After we had returned to our car and were having refreshments the thought occurred to me that this must have been an artillery practice

R. J. S. NLS

area at some time. I was still confident, however, that the shell I had picked up was expended and harmless. I had carefully avoided disturbing any of the shells that appeared to be intact.

We had also gathered some pottery as we explored the Indian ruins, and had also put this pottery in the trunk of the car. After having refreshments we started for home, stopping once more near the roadway where we saw some pottery close by. We picked up some of this pottery and then returned to my home at 3150-C Trinity.

After we arrived home we took the pottery from the trunk and took it inside to clean it up. Frank (my nephew) and my daughter started cleaning the pottery in the kitchen sink. Frank had been the last one to take pottery from the trunk of the car, and, unknown to me, had left the trunk unlocked. After he had finished cleaning pottery Frank went outside to play with other children in the neighborhood. My daughter was still cleaning pottery when Frank went outside. My wife and I were sitting in the living room at that time.

Apparently Frank returned to the car and took the shell from the trunk of the car. I had no idea he had taken the shell from the car, nor that the trunk was not locked. I believe Frank had been gone about twenty minutes when we heard a loud explosion. I ran immediately to the door and saw smoke in the vicinity of the boiler room of the house across the street (Gold) from my home. My first thought was that a boiler had exploded. I ran down the stairs toward the scene, and as I approached I heard my nephew screaming.

I realized then that the doors were still on in front of the boiler room. I knew then that it was the shell that had exploded. I saw my nephew and ran directly to him. I was aware that others were nearby and that others had also been injured, but I did not see them or know who they were. There were many people around within a very short time and I guess others were taking care of the other injured children (I did not know that other children were involved at that time, however).

When I got to my nephew I saw that one foot was almost completely separated from his leg. I immediately applied a tourniquet to that leg. Then someone else was there applying a tourniquet to his other leg. I called to my wife and told her to call the ambulance and fire station. I don't know whether she did or not, but within a few minutes fire trucks, ambulances and police cars had arrived. Frank was put in an ambulance and taken to the hospital.

After the ambulance had gone I contacted Lt. Seeley and told him what had caused the explosion and also told him that there were many more of these shells in the area where we had been that afternoon. Later on, after we had been to the hospital, I went with Lt. Seeley and Mr. John Schroer to that area and showed them where the shells were.

28 xbs



Later in the evening while I was at the hospital Frank was talking about the incident. He was still in shock, but he said "Why did I throw the bomb?" From this and other things Frank said during this time I gathered the opinion that the children had been playing with the shell and apparently Frank threw or dropped the shell into a small holw in the yard at 3144 Gold.

I had seen this hole prior to the explosion--it was only a small hole at that time, probably no more that four inches deep, and had possibly been dug by children in their play. It is possible that Frank had thrown the shell into the hole while the other children were standing by either watching or playing with him. I cannot be sure of this because I realize that Frank was in shock at the time he was talking, but this is as near to an accurate conclusion as I can make of the activities of the children immediately prior to the explosion.

I certify that I have read the foregoing statement consisting of three pages and find the contents thereof to be a true and correct transcript of the oral statement made by me to Lt. Neil G. Seeley, whom I know to be a member of the Los Alamos Police Department. The foregoing statement was made voluntarily by me, without threat or promise, and I further declare that I shall be willing to appear as a witness in any court action that may be deemed necessary. I have signed my full signature to page number three of this statement and have initialed each page numbered one and two.

Neil G. Seeley Witness

Helene Sandor Witness

John M. Reilly  
July 15, 1962  
6:00 P.M.



Exhibit F



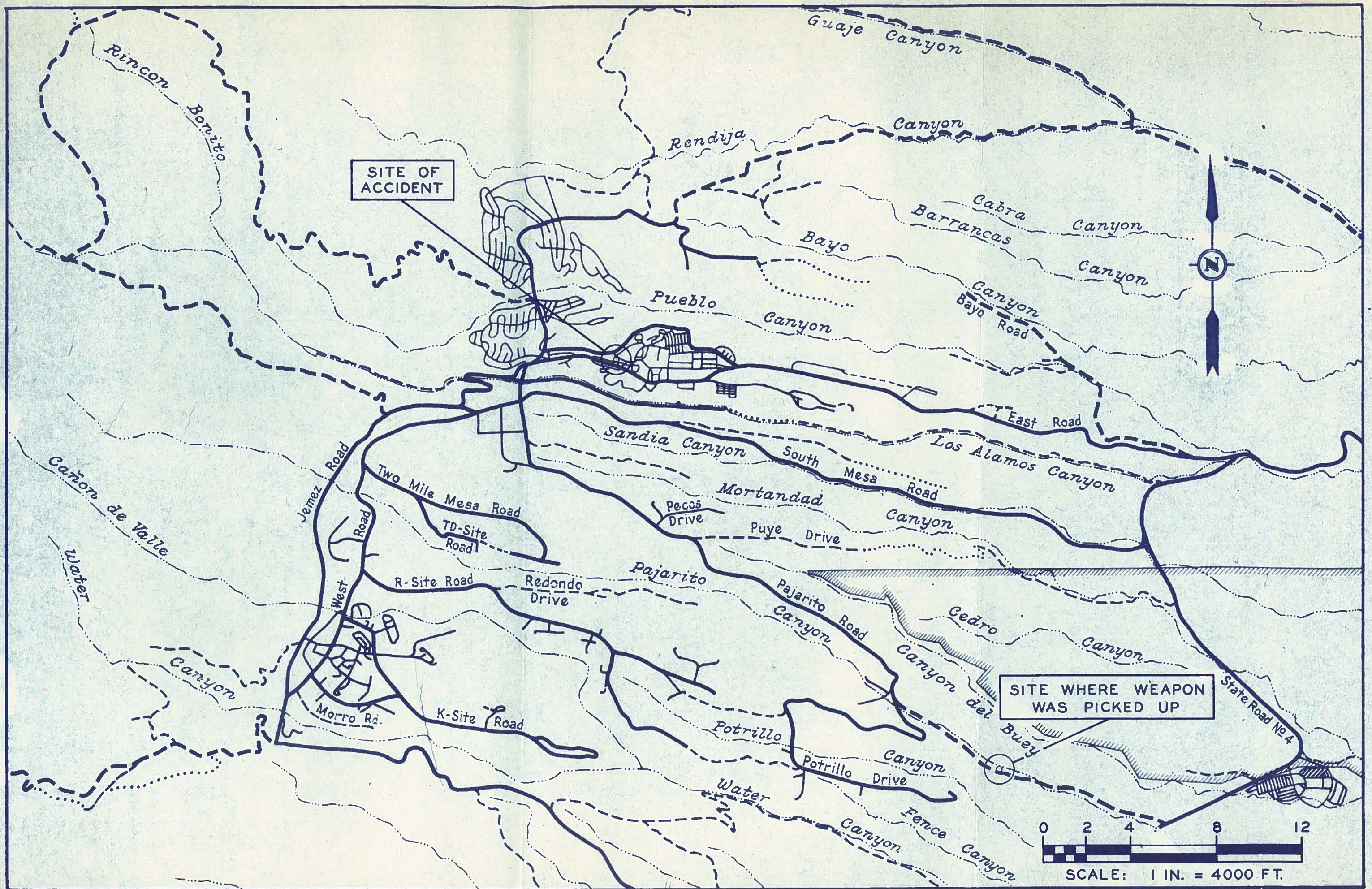
SECURITY PHOTO LAB.  
DATE TAKEN JUL 15 1962

RE-ORDER BY # 14898

PHOTO TAKEN BY J. D. SHORES

CLASSIFICATION







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2314 West Oak Drive  
Austin 4, Texas  
5 August 1962

United States Atomic Energy Commission  
Los Alamos, New Mexico  
Attn: James P. Hogan

Ref LC:JPH

Dear Mr. Hogan,

I am in receipt of your letter dated 30 July 1962 concerning your investigation of Los Alamos Explosion.

I can confirm the information that you already have as to the general location of the bazooka firing which took place in 1947 at Los Alamos.

In addition I add the following:

1. In the period June - Dec 1947 there was a bazooka accident wherein three children were playing with a 2.36 round and, after being dropped from the second floor of a house near the main tech area, it went off on impact between the legs of one of the children. To the best of my knowledge that round was supposed to have been a family souvenir and not one from either the Pajarito or Bayo Canyon ranges.

2. My company, Company C, fired its rounds in Pajarito Canyon, utilizing the sandstone wall as the target area. I have enclosed a photograph - slide - of the actual firing site used by us. Perhaps it will narrow your search somewhat. I hope so anyway.

3. As far as disposal or removal of duds was concerned the orders from Maj. Richard Newcomb - Battalion Commander - were to recover all unfired rounds and repack for return. This was easy to accomplish because the rounds didn't bury themselves since their energy of flight was quickly absorbed by the sandstone cliff.

4. Other personnel who may be able to narrow the field or pin point things are:

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Capt. Wm. Higgins  
Capt. Geo. W. McMaughan  
Lt. Thomas P. Golden  
Lt. Harvey Khol  
Capt. Edward Sterling

All grades are as of 1947 of course.

When you are through with my slide I'd appreciate  
your returning it to me at the above address.

I sincerely hope I have been of some assistance in  
your mission.

Yours truly,  
Bernard W. Detlefsen  
Capt., U.S.A. (Ret.)

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Case No. 7407  
Los Alamos Police Dept.  
July 20, 1962

Statement of Jimmy R. Johnson, Age, 20, Sex, Male, Single, BOB 5-12-42, Place of Birth, Servivle, Tennessee, Citizen of USA, Occupation, Machanic's Helper for Zia, Stationary Equip/ment, Residence Address: 666 26th street, Phone: 2-3094, Business Phone: 7-4471.

On July 14, 1962, I arrived at the scene of the explosion on Gold Street after the victims had been carried off in the ambulance. I, Jeff Scott, lives at 26th & Trinity and another guy; I don't know his name but he lives in the Chapel Apartments, dug in the hole that the explosive made and we found pieces of metal that were real small. We found these pieces of metal about 19 inches from the surface of the ground.

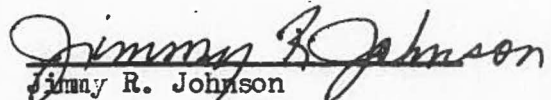
We then dug some more and found a tapered piece of metal 27 inches from the surface of the ground. We checked the boiler room for metal but we did not find anything else.

When this guy I don't know and I came to the police station and brought this tapered piece of metal with us and gave it to the man on the desk downstairs.


I don't know the names of the other people that were there, but I have the SUN newspaper and the picture of all of us that were there came out and their names, so I can bring the paper down and show you who were there and also their names.

From what we saw in that hole, if there hadn't been rocks or cement, the projectile would have gone deeper. I don't know for sure what was in the bottom of that hole, but we felt something very hard like rocks or something. We also looked down in the hole with a flashlight but we couldn't see anything else.

I certify that I have read the foregoing statement consisting of one page and find the contents thereof to be a true and correct transcript of the oral statement made by me to Officers Seeley and Trujillo, whom I know to be members of the Los Alamos Police Department. The foregoing statement was made voluntarily by me, without threat or promise, and I further declare that I shall be willing to appear as a witness in any court action that may be deemed necessary. I have signed my full signature to page number one.

  
Jimmy R. Johnson

WITNESS:

  
Officer Hidalgo M. Trujillo #26

CODY

Case #C-7407  
Los Alamos Police Dept.  
July 21, 1962

Statement of: Jeff L. Scott, WM, 43, DOB June 22, 1919, POB Eddy, Texas.  
United States citizen, Occupation: Mechanic. Employer:  
Zia Company, Los Alamos, New Mexico. Residence: 2573-D,  
Trinity Drive, Los Alamos, N. Mex. Telephone 2-3909.

The evening of July 14, 1962, at about 7:00 P.M., I, in company of Jimmy Johnson, and Charles Caldwell, was looking at a hole in the ground which was caused by some kind of an explosion at the front of 3144 Gold Street, in front of apartment "A", where several children were hurt.

Mr. Charles Caldwell asked, "I wonder what's in there", so I started digging into the ground with my hands where the hole was. The hole was about 4 inches in diameter. I guess that I dug down about eight inches with my hands, as it was very soft. Then I used a stick and dug it down a little more, I would say about another eight inches.

We couldn't dig any deeper with the stick, so we wondered about the area of the explosion, observing several small pieces of clothing and bits of flesh. I would say we looked around for about another 30 minutes, when Charles Caldwell stated that he wished they could dig deeper, because he believed that there was something else in the hole.

We went back to the hole and started digging again when Mr. T.R. <sup>Sanchez</sup> ~~Trujillo~~ came over and said that he had a piece of pipe about three feet long, with a hook on one end, and he believed we would be able to dig deeper with it. <sup>-J.S.</sup>  
Mr. ~~Trujillo~~ came back pretty soon with the pipe and we went on down about another six or seven inches, and found a piece of brass about three inches long, coming to a dull point, so we dug it out and took it to the police station where we turned it over an officer. I don't know who the officer was that accepted the metal, but Mr. Charles Caldwell was the one that took the piece to the police station.

We dug down another eight or ten inches with the pipe, so all in all, we went down about 27". I had a two foot rule in my pocket, and after having extended it all into the hole, it went down into the ground another three or four inches.

The first fifteen inches were easy digging, but from there on, it became very rocky, and hard to dig.

I certify that I have read the foregoing statement, consisting of one page, and find the contents thereof to be a true and correct transcript of my oral statements to officer Felipe Sandoval, whom I know is a member of the Los Alamos police department. The foregoing statement was made voluntarily by me, without threat or promise of any kind. I further declare that I shall be willing to appear as a witness in any court action deemed necessary. I have signed my signature to this one and only page of this statement.

Signature 





**SECURITY PHOTO LAB.**

DATE TAKEN **AUG 10 1962**-----

RE-ORDER BY # **14958**-----

PHOTO TAKEN BY **D.D. SHORES**..

CLASSIFICATION -----

## **Appendix 2**

**Report of Investigation: Explosion of Bazooka Shell, 3144 Gold Street, Los Alamos, New Mexico, July 14, 1962, Part 2**



~~OFFICIAL USE ONLY~~

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REPORT OF INVESTIGATION

EXPLOSION OF BAZOOKA SHELL  
3144 Gold Street  
Los Alamos, New Mexico  
July 14, 1962

PART 2

The Area Manager's Investigating Committee, having made the foregoing report of facts, now tenders the following conclusions and recommendations:

Conclusions

1. The death and injuries were the result of explosion of a 2.36-inch rocket round which was removed by John M. Reilly from the former military range located in Pajarito Canyon.
2. The explosion resulted from the rocket's finally receiving, upon its being dropped by Frank Taccetta, sufficient impact to cause the fuse to function. It had survived at least four impacts earlier.
3. The Committee is reluctant to express conclusions about responsibility for the incident, but finds that:
  - (a) It would not have occurred had all shells been removed from the range.
  - (b) It is not possible ever to be certain that all shells have been removed from an extensively used range.
  - (c) The incident would not have occurred if the road in Pajarito Canyon had not been open to the public.
  - (d) The Army's use of the canyon area for a bazooka range created the state of hazard.
  - (e) Years ago (when the signs were erected) there was a consciousness of the hazard from the probable presence of unexploded shells.
  - (f) In the intervening years, it appears that evaluations of the continued presence of this hazard were confined to examinations of the floor of the canyon.

~~OFFICIAL USE ONLY~~



- (g) A lack of continuity of knowledge about the use of the area as a range and about the probable presence of live "duds" and a lack of knowledge on the part of inspectors and their supervisors of where the shells might be, from Army days to early AEC days and through the present, have combined to produce the result that there was effectively opened to the public a road immediately adjacent to an area which was believed to contain no danger. This belief was erroneous.
- (h) The incident would not have occurred had Mr. Reilly not picked up and removed the shell.
- (i) The Reilly group would not have left the road had its sides been posted with "No Trespassing" signs.
- (j) Mr. Reilly would not have removed the shell, once found, if there had been signs warning of the possible presence of explosives.
- (k) Mr. Reilly believed the shell was safe. That belief was erroneous.

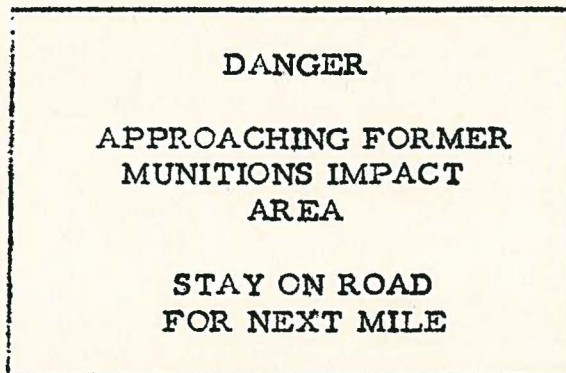
Recommendations

The Committee recommends:

1. That efforts now underway to locate all areas which might have been used for the firing of explosive munitions be continued.
2. That as the most effective protection against future tragedies, all school children in Los Alamos be given lectures at convenient intervals indefinitely. The lectures should be conducted by soldiers, for impressiveness, and should acquaint the children with the appearance and danger of bazooka rounds, mortar shells, 37 mm and similar shells, and grenades.
3. That pictures of the munitions mentioned in the immediately foregoing recommendation be posted periodically, or kept permanently, on bulletin boards throughout Los Alamos. Pictures should also be published at convenient intervals in local contractor publications.



4. That in conjunction with recommendations 2 and 3 above, the children and those who see the bulletin boards and house publications be warned not to touch any munitions they discover, but to report their locations to the Police Department.
5. That any munitions impact areas known to be in the vicinity of the community be securely fenced and posted with signs warning of the possible presence of explosives.
6. That the impact area in Pajarito Canyon where explosives may be present be identified by field survey, and that it plus a generous fringe area be fenced. The fence should be posted at close intervals with signs warning of the possible presence of explosives.
7. That a sign as indicated below be placed on either side of Pajarito Road facing traffic and spanning the impact area:



8. That the area of Rendija Canyon and the mesa immediately north thereof be evaluated by field survey to identify the apparent extent of the impact areas from firings of 60 and 81 mm mortars, 37 mm and possibly other guns and bazookas. The Committee recommends that the zones of sparse impact be cleared by qualified Army personnel or others under qualified supervision. Those areas which can be identified as regions of dense impact should be fenced and posted with signs as recommended for Pajarito Canyon.

9. The Committee purposely makes no recommendation now about control devices (signs, kinds of signs, fences, etc.) on the road in Rendija Canyon. It recommends postponing that decision until the canyon has been swept in accordance with the other recommendations, after which more information should be available on which to base a decision about general use of Rendija Canyon. In the meantime, the temporary signs now in place along Rendija Road should stay where they are.
10. That all impact areas identified now or subsequently, whether fenced or not, be cleared and that they be inspected semiannually and recleared as the inspections indicate the need.
11. That there be instituted a rigidly enforced program of regular maintenance for the fences and signs placed in accord with these recommendations, to extend for the indefinite future. Relaxation of this program, or abandonment of these protective measures should be permitted only when, in the deliberate judgment of the AEC based on the advice of qualified Army personnel, the hazard no longer justifies them.

The Committee endorses the substance of the recommendations made by Lt. Col. E. L. Robinson, Operations Officer, 61st Ordnance Group, which were prepared by him after consultation with the Committee, and recommends they be followed. A copy of Col. Robinson's recommendations is attached as Exhibit V.



Investigating Committee - Bazooka Explosion

/s/ James P. Hogan  
James P. Hogan, Chairman

/s/ C. A. Burch  
C. A. Burch, Member

/s/ R. W. Drake  
R. W. Drake, Member

/s/ L. J. Cotton, Jr.  
L. J. Cotton, Jr., Member

/s/ E. L. Brawley  
E. L. Brawley, Member



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Statement of  
Lieutenant Colonel Edgar L. Robinson  
Operations Officer of the 61st Ordnance Group  
Fort Bliss, Texas

August 2, 1962

Facts bearing on problem:

1. Based upon available evidence it appears that an attempt was made by firing personnel to police expended rounds after firing. This is substantiated by the presence of nose cones, in quantity, but an absence of explosive or inert projectiles.
2. There is no known procedure, short of removing all rock and vegetation and either burning or mechanically screening all soil to a depth of 48" in the suspected areas, that will offer 100% assurance that explosives do not still exist.
3. The vast amount of terrain which would be affected by 2 above precludes any attempt at 100% safeing.
4. The Fourth U.S. Army has the responsibility to effect removal of any explosives located in the Los Alamos area which are foreign to the mission of Los Alamos.
5. The facilities of the Fourth U.S. Army Explosive Disposal personnel located at Fort Bliss, Texas, are available for educational programs on explosives safety as well as removal of discovered explosive, assistance in screening suspected areas or acting in an advisory capacity in determining extent of contamination and actions required to remove hazards found.
6. It is the responsibility of the AEC to report all explosive hazards to the Commanding Officer, 133rd Ordnance Detachment (ED), Fort Bliss, Texas. Telephone 562-2606, Area Code 915.
7. The AEC is responsible for effecting necessary action to mark and secure defined hazardous areas.
8. It is the responsibility of the CO 133rd Ord. Det. to present explosive hazards lectures to all interested personnel and Explosive Ordnance Reconnaissance classes to selected personnel having a need for this knowledge.

Recommendations:

1. A PI program be initiated to explain to all concerned that no amount of effort expended will ever assure a completely clear area.

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2. Establish explosive hazards lecture schedules to cover all schools, civic clubs, fraternal organizations, etc. and give wide publicity to the lecture times and locations to acquaint all possible personnel with the hazards which may be encountered.
3. Train all police, security guards, Civil Air Patrol, fire department, explorer scout posts, scoutmasters, maintenance personnel and any other interested people in Explosive Ordnance Reconnaissance.
4. Fence the defined hazardous area known as Pajarito with barbed wire fencing to encompass top, ends and bottom of the contaminated bluff area. Fencing to contain warning signs with additional "NO STOPPING" "HAZARDOUS AREA" signs along roadway.
5. Fence the 37 mm impact area on the edge of Guaje Mesa to include the rock outcroppings on both East and West ends of the bluff and slide area used as primary target sector.
6. Manually sweep Rendija Canyon to the 60,000 gal. tank on the West end of the canyon and from the foot of the bluff at the firing site North and East to approximately 6500-foot elevation line. If the sweep produces sufficient evidence of contamination construct a fence line East and West along the line of greatest possible residual contamination with appropriate signs.
7. Due to the innumerable slides which have occurred in the area behind the property of Doctor Mather and the extremely porous and loose composition of the bluff face it is extremely doubtful if extensive screening of this area would ever produce satisfactory clearance. Recommend fencing of this area from the highway along the top of the cliff for three hundred yards, down the cliff face, back to the roadway at the junction of North Mesa Road and San Ildefonso Road, and back up San Ildefonso Road, paralleling the road, to the starting point. Installation of appropriate warning signs.
8. Conduct range sweep of Rendija Canyon beginning Monday, 27 August 1962, utilizing 6 military personnel of 133rd Det. and from 50 to 100 Los Alamos personnel. (The higher number available the more complete clearance can be obtained.)
9. 133rd Ord. Det. personnel to survey all other suspect areas during the August visit and conduct a reinspection of all suspect areas semi-annually or on call.

### **Appendix 3**

**Memorandum to distribution from Charles C. Campbell, Area Manager, Los Alamos Area Office, AEC, "Investigation of Accident in Los Alamos on July 14, 1962," July 16, 1962**



UNITED STATES GOVERNMENT

# Memorandum

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TO : Those Listed Below

DATE: July 16, 1962

FROM : Charles C. Campbell, Area Manager,  
Los Alamos Area Office, AECSUBJECT: INVESTIGATION OF ACCIDENT IN LOS ALAMOS ON  
JULY 14, 1962

LA:CCC

An investigating committee is hereby appointed, composed of the persons named below, with responsibilities as follows:

- (1) To investigate history, location, and use of former military firing ranges wherever located in Los Alamos County, with particular emphasis on the site from which an explosive projectile discharged in Los Alamos on July 14, 1962, had been removed;
- (2) To investigate specifically the incident involving the discharge of such projectile, in the vicinity of 3144 Gold Street, and report on all ascertainable facts related thereto;
- (3) To report the conclusions reached by the committee, if any, as to responsibility for this incident;
- (4) To make recommendations for action needed to preclude similar incidents in the future.

The investigating committee is hereby authorized to question

(continued)

ADDRESSEES (Members of Investigating Committee):

James P. Hogan, Counsel, Los Alamos Area Office, AEC, Chairman  
E. L. Brawley, Chief Safety Engineer, Operational Safety Division,  
Albuquerque Operations Headquarters, AEC  
L. J. Cotton, Jr., Chief, Administration and Real Estate Branch,  
Engineering and Construction Division, Albuquerque Operations  
Headquarters, AEC  
Robert W. Drake, Assistant Division Leader, GMX Division,  
Los Alamos Scientific Laboratory  
C. Austin Burch, Alternate Group Leader, Group H-3, Los

Those Listed Below

- 2 -

management and supervisory officials and other employees in the Atomic Energy Commission organization; personnel employed by Atomic Energy Commission contractors; and other witnesses. The committee is further authorized to call upon AEC and contractor officials and employees for such consultation and advice as may be required.

The committee shall make its report to the Area Manager, Los Alamos Area Office, as early as possible.

CC: L. P. Gise, Acting Manager, Albuquerque Operations,  
AEC, Albuquerque (3)

V. C. Vespe, Director, Operational Safety Division,  
ALO Hq, Albuquerque

R. E. Schreiber, Acting Director, LASL (3)

H. E. Roser, Asst. Area Manager for Community Affairs,  
LAAO

King Derr, Public Information Officer, LAAO



#### **Appendix 4**

**Memorandum to Charles C. Campbell, Area Manager, Los Alamos Area Office from James P. Hogan, Counsel, Los Alamos Area Office, "Possible Litigation from Bazooka Explosion," July 24, 1962**

*Memorandum*

TO : Charles C. Campbell, Area Manager  
Los Alamos Area Office

DATE: July 24, 1962

FROM : James P. Hogan, Counsel  
Los Alamos Area Office

SUBJECT: POSSIBLE LITIGATION FROM BAZOOKA EXPLOSION

LC:JPH

This is a cursory review and rough analysis of the law and the facts bearing upon the possibility of litigation under the Federal Tort Claims Act on behalf of the children who were injured, and on behalf of the parents of the child who was killed, in the explosion which occurred on July 14, 1962. I cannot come to any firm conclusion except that, as I mentioned to you when we first discussed the incident on July 15, each side probably has a respectable case and the decision if litigation starts will in all probability turn upon an evaluation of the significance of facts, particularly facts concerning the knowledge of the parties. There is no doubt that the Federal Tort Claims Act applies, and that litigation could be instituted.

We have briefly discussed whether LAAO should take a position in the event our views are requested about a private bill for the relief of the families. I am inclined to think, regardless of considerations of natural sympathy, that a private bill would be inappropriate. The intent of the Federal Tort Claims Act is to substitute the United States district courts for Congress as the ordinary agencies which will determine the validity and value of tort claims that come within the scope of the statute. Until its enactment, the United States could not be haled into court as a defendant to resolve claims because the courts simply had no jurisdiction. The result was that Congress was bearing a heavy burden of private bills to which it could not give the careful consideration it apparently thought it should give to such questions as whether a private person in circumstances similar to those of the United States would be ethically and legally liable. The purpose of the Act was to relieve

(continued)



Congress of the necessity of determining the merits of most tort claims and to provide fair and convenient administrative and judicial remedies to persons injured through the fault or negligence of a government employee. The Act abrogates the ordinary immunity of the government against suits in tort and makes it liable in the same manner and to the same extent as anyone else, simultaneously affording government employees some relief from what might otherwise be personal liability. See generally the discussion of the Act in 91 C.J.S., United States, Section 117.

Relevant provisions of the Federal Tort Claims Act include 28 U.S.C.A. 1346(b); 2401(b); 2672; 2674; 2675 and 2680.

28 U.S.C.A. 1346(b) confers on the district courts the necessary jurisdiction to hear civil actions against the United States for damages for personal injury or death caused by the negligent or wrongful act or omission of a government employee within the scope of his employment under circumstances where the United States, if a private person, would be liable in accordance with local law.

28 U.S.C.A. 2401(b) bars a tort claim against the United States unless an action is begun within two years after the incident leading to the claim occurs. However, if the claim is for \$2500 or less and presented in writing to the federal agency involved within the two years, an action can be brought on it within six months after the date the claim is withdrawn by the claimant from the agency or from the date the agency finally disposes of it.

28 U.S.C.A. 2672 authorizes such agencies as the AEC to consider, adjust, determine and settle claims of \$2500 or less within the scope of the Federal Tort Claims Act. If a claim for that amount is made to an agency and the agency's award is accepted, that is conclusive. Such awards may be paid out of available appropriations.

28 U.S.C.A. 2674 is the substantive provision, complementing 28 U.S.C.A. 1346(b), making the United States liable for tort claims in the same manner and to the same extent as a private individual under like circumstances. However, it stipulates that the United States

shall not be liable for punitive damages and if, in any death case, the local law provides only for punitive damages, the United States is to be liable for actual or compensatory damages instead.\*

28 U.S.C.A. 2675 assures that no court action may be started while a claim under 28 U.S.C.A. 2672 is pending before the agency. However, the claimant may withdraw the agency claim and sue for damages, but for no more than the amount claimed from the agency unless the increase is because of new evidence.

28 U.S.C.A. 2680 limits the general scope of Section 2674 by a number of exceptions, of which only the first seems even remotely applicable to our situation. That exception runs to any claim based upon an act or omission of a government employee, exercising due care, in the execution of a statute or regulation, or based upon the exercise or performance or failure to exercise or perform a discretionary function on the part of the agency or the employee. It is my belief that the exception does not apply.

Section 1346(b) hardly requires any discussion. It is apparent that the parents or personal representatives of the children involved in the recent accident would, if they instituted court actions at all, claim "money damages . . . for injury . . . or death caused by the negligent or wrongful act or omission of [an] employee of the Government while acting within the scope of his . . . employment . . .".

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\*New Mexico law does not provide that damages in wrongful death cases are "only punitive". N.M. Stats. Annotated, 22-20-3 says that the personal representative of the deceased person may recover in a proper case both compensatory and exemplary damages. "Exemplary" probably means punitive, but the language of the state statute in any event makes it clear that New Mexico damages are not "only punitive". There are no statutory limits on the amount of recoverable damages in wrongful death cases in New Mexico except where a common carrier is involved. Neither is there any absolute maximum prescribed for damages for injuries.

(continued)



Similarly, Sections 2401(b) concerning the period of limitations and Section 2672 authorizing agency handling of claims of \$2500 or less, require no discussion for present purposes. We might speculate whether the people involved would present an administrative claim. Certainly, it takes no great amount of ingenuity to imagine a structure of damage details which would easily bring each claim above the \$2500 level. Even in the unlikely event that the personal representative of the Williams boy, and possibly the parents of the Preciado girl, who sustained relatively minor injuries, might not claim more than \$2500, nevertheless they could well decide to forego the administrative claim in favor of starting immediately in court.

Section 2674 says, in effect, that the United States will be liable for the results of the bazooka explosion if a private individual under like circumstances would be liable. This applies the local New Mexico law to the situation, and the United States may be sued in accordance with that law and held responsible in the same manner and to the same extent as any private person or firm with the single exception (so far as measure of damages is concerned) that the government may not be required to pay interest prior to judgment nor to pay punitive damages. How might these concepts apply to our situation? First of all, we may say with certainty that there is no substantial difference between the legal posture of the injury claims and that of the death claim because the State law is that when death is caused by wrongful act or negligence and the act or negligence is such as would, if death had not ensued, have entitled the injured party to recover damages, then the person responsible is subject to the same liability to the personal representative of the deceased.

I have not been able to go very deeply into New Mexico law concerning such facts as are posed by the explosion. Generally, however, it may be accepted that one is liable to another if he injures him because of some act or omission which was not taken in the exercise of that degree of care which a hypothetical reasonable man would have exercised in the same circumstances and if the act or omission was a proximate cause of the injuries. There are many refinements of this basic principle, of course, but more often than not they tend to be resolved by the familiar

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statement that it is for the jury\* to evaluate the evidence whenever there is any evidence. We have a number of points in our favor which have some strength. For one thing, the Taccetta boy may have been at least technically a trespasser and it is well accepted that an owner of land has no duty consciously to make his premises safe for trespassers. Ford v. United States 1952, 200 F.2d 272. An owner must refrain from deliberately harming a trespasser and may not knowingly expose him to a hidden danger without warning. Whether the effects of the trespass may be taken to have continued, as a legal proposition, to the later time and different location where the accident occurred after the shell was removed from its place of rest will require further work which I think would be futile at this stage. At best, only one potential claimant can be directly affected by the trespass element. The other aspect of the trespasser rule, that of the duty to refrain from knowingly exposing a trespasser to a hidden danger, without warning, is one which will probably be resolved as a factual question. In our favor are the facts that the impact area apparently had been quite well cleared by the Army years ago; that actually we were unaware of the presence of shells; that AEC had little particular reason to believe (as distinguished from knowledge) that the shells were present; and finally that travellers through the area had at least as much notice of the situation that the AEC did.

Some of the factors mentioned in the preceding sentence can probably be made to bear on the Williams, Jujan, Dahlby and Preciado cases.

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\*I use the word "jury" here because it helps maintain the distinction between the law itself and factual issues. Actually, there can be no jury if an action is brought under the Federal Tort Claims Act. Whether this in fact makes much difference in a case like ours is debatable. It is popular to assume that the absence of a jury is a good thing for the defendant in such cases, but that is not necessarily accurate. Within my admittedly limited experience in such matters, I have seen some judges evaluate the facts in fashions that are certainly not distinguishable from those a jury might use.

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Possibly our best point, so far as New Mexico law is concerned, rests in the conduct of Mr. John Reilly, the adult who brought the shell into town and placed it where the radius of its danger could engulf the children. Mr. Reilly tells a confused and mildly inconsistent account. However, as a minimum it is clear that he has reached an age (29) and a stage of education which impose on him the duty to act as a reasonable adult in the same circumstances would act. It is also fairly sure that a court would find as a matter of fact that Mr. Reilly took the shell into his possession, that he brought it home under circumstances which made its presence known to a child, Frank Taccetta, and that he took no precautions to prevent Frank Taccetta and others from obtaining unsupervised possession of the shell. It is less certain, but fairly possible, that the court would find that Mr. Reilly was consciously aware that the object he picked up was a shell, that it could be dangerous and that care was advisable, but that he deliberately made up his own mind that it was safe. Balanced against this is the fact that Mr. Reilly did throw the shell down a cliff, subjecting it to rather violent treatment, and that it did not then explode which arguably could lead him to conclude, as the hypothetical reasonable man in the same circumstances could, that the shell was harmless. For discussions of the significance of conduct of this general kind, see Foster v. U.S. (United States District Court for New Mexico 1959), 183 Fed. Supp. 524. A court could decide that even if the United States were negligent, nevertheless its negligence was not a proximate cause of the injuries by virtue of the effective intervention of an independent force in the person and actions of John Reilly. The New Mexico authorities bearing on concurrent and proximate cause are very few and their facts bear little resemblance to those with which we are concerned. The New Mexico rule is stated in Thompson v. Anderman, 59 New Mexico 400, 411-412 (1955), as follows:

"The proximate cause of an injury is that which in a natural and continuous sequence, unbroken by any new, independent cause, produces the injury, and without which the injury would not have occurred.

"What intervening cause will break the chain of sequence and so far insulate the first wrongdoer's negligence from

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injury as to relieve such wrongdoer? The independent intervening cause that will prevent a recovery of [sic] the act or omission of a wrongdoer must be a cause which interrupts the natural sequence of events, turns aside their cause, prevents the natural and probable results of the original act or omission, and produces a different result, that could not have been reasonably foreseen. The concurrent or succeeding negligence of a third person which does not break the sequence of events is not such a cause, and constitutes no defense for the original wrongdoer, in the absence of the concurrent or succeeding negligence, the accident would not have happened. [sic]

"Based upon the foregoing rule, the mere fact that there was an intervening act or event is not, as a matter of law, sufficient to constitute a non-conductor and insulate the negligence of the [defendant]. Such intervening cause must be sufficient in and of itself to break the natural sequence of the first negligence and stand as the efficient cause of the injury and damage. Where a person by his own negligence produces a dangerous condition of things, which does not become active for mischief until another person has operated upon it by the commission of another negligent act, which might not unreasonably be foreseen to occur, the original act of negligence is then regarded as the proximate cause of the injury which finally results."

In my opinion, a court could properly hold that Mr. Reilly's actions were not efficient intervening causes which insulate the United States from liability. I do not predict that it would do so, but if it did I doubt that we could get the action reversed.

It has been suggested by people who have tried to talk to me about this, that there may be an absolute liability theory upon which the United States' liability could be predicated. Such a theory does exist in the law of torts, and ordinarily is used against one who has harbored a particularly dangerous instrumentality that has harmed others, in the complete absence of negligence. I believe that in such circumstances explosives

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have been held to be such particularly dangerous substances. However, the Federal Tort Claims Act does not consent to suits against the government on absolute liability grounds. Bartholomae Corp. v. United States 1955, 135 F. Supp. 651. Under that Act, the United States is liable only if a private person in like circumstances would be liable for negligence or omission. Dalehite v. United States 1953, 346 U.S. 15, 73 S. Ct. 956; United States v. Taylor 1956, 236 F.2d 649; and Goodwill Industries of El Paso v. United States 1954, 218 F.2d 270.

Before reviewing briefly a few cases which cast light on the question of our negligence, if any, I would like to dismiss any substantial hope we might entertain for claiming that we are exempt from the Federal Tort Claims Act under the discretionary functions exception of Section 2680(a). The Dalehite case, cited above, said that the discretionary functions include more than the initiation of major programs, extending to the discretionary determinations of executives in making plans and specifications, and also to the acts of subordinates in carrying out the plans. However, the sweep of that decision has been turned back to a great degree. For example, it has been held that deciding whether hand rails should be placed in an office building is not a "discretionary function". American Exchange Bank v. United States 1958, 257 F.2d 938. Failure to warn an employee of a contractor removing scrap metal from a range of the existence of known danger is not discretionary. United States v. White 1954, 211 F.2d 79. Neither the fact that a function is peculiarly governmental, never private, nor that the undertaking in the first place is discretionary, makes a failure to continue the function where mariners have come to rely upon it for their guidance in navigation, within the discretionary function concept. Indian Towing Co. v. United States 1955, 350 U.S. 61, 76 S.Ct. 122. Finally, failure to maintain safety devices such as hand rails on a bridge over a federally maintained canal on an Indian reservation was treated as not being discretionary. This was in a New Mexico case, Foster v. United States 1959, 183 F. Supp. 524, affirmed 280 F.2d 431. See also Bulloch v. United States 1955, 133 F. Supp. 885, indicating that the fact that AEC may legally possess and use munitions in its discretion does not insulate it from the Federal Tort Claims Act for the results of alleged negligence where the discretion

involved in possessing and firing the munitions had been exhausted. Bartholomae Corp. v. United States, cited above, may be an exception from the usual tendency of the decisions, but in that case there were only a limited number of safety devices available and the AEC officer involved had to exercise significant and esoteric discretion in using them.

Decisions discussed below bear upon the fundamental question of liability.

Perhaps the case closest to our situation if all facts were known, is Krause v. United States, an unreported action that was heard in the United States District Court for Arizona. The plaintiff obtained a judgment for damages sustained in the explosion of a bazooka shell. Judgment was entered December 3, 1951, and undoubtedly we can run this case down later if we need to do so. Indications of its nature can be found in United States v. Arizona, 214 F.2d 39, which was auxiliary to the Krause case itself. That report indicates that Krause, a boy scout, while playing with a bazooka shell on a former military reservation in Arizona, was injured by its explosion. The area had been a federal military post, but had been conveyed to the state less than a year before the accident. Apparently there was no factor of trespass and no intervening cause comparable to John Reilly although there were technical arguments about whether ownership by the State of Arizona had the effect of transferring responsibility. Krause obtained a judgment against the United States, which had "cleared" the range with less than complete success before conveying it to the state. There were no signs warning of danger. Ten months before the accident and while it was still federal property, the range was certified by an army officer to have been cleared. The asserted acts of negligence were (1) absence of warnings; (2) failure to clear the area completely; and (3) issuance of the certificate of clearance. I cannot tell from the report which of those three counts of negligence, if not all, underlay the judgment.

Indian Towing Co. v. United States 1955, 350 U.S. 61, 76 S.Ct. 122, predicated federal negligence on the Coast Guard's failure to keep a lighthouse working, where absence of the light led to a marine accident. However, on that point the decision was placed largely on the ground of reliance by the public on the presence of the light, from which there flowed a duty to keep the light operating.



In our situation we do not have a clear "reliance" element so far as warning signs are concerned, but in the Krause case, discussed above, one count of negligence seemingly was failure to post signs around the area where the child got the shell. Against any assertion we might make that no one relied upon the presence of signs and that therefore we bore no duty to keep them posted for the benefit of the public, it could be asserted that the mere absence of signs entitles one to rely on there being no need for them.

In White v. United States 1951, 97 F. Supp. 12, the District Court in California held that it was actionable negligence for federal officers to fail to warn the employees of a contractor of the presence of dangerous ordnance where the contractor was undertaking to remove scrap metal from a range. However, in that case it was definitely known - consciously known in fact - that duds were present and that the man later injured (or people like him) would in fact be present on the range so as to be exposed to the danger. That was more of a quasi-deliberate trap than our situation could possibly be held to have been.

A closer case on its facts is Ford v. United States 1952, 200 F.2d 272, which arose from the explosion of a booby trap which injured a child and led to a suit under the Federal Tort Claims Act. A military reservation in Oklahoma had been "deactivated". Training which had been conducted at Camp Gruber included use of booby traps. The Army attempted to clear the area of all live ammunition, apparently for the deliberate purpose of returning the land to civilian use. Under regulations of the War Department which are not identified, the Army tried to decontaminate the area and evidently did so with a high degree of success. Two or three years passed during which the land was grazed by privately owned stock, and during that time some duds were found and removed. Some seven months after the second clearing, a child entered the reservation, climbed a tree, and was injured by a booby trap concealed in it. It was known to the Army that people were accustomed to go upon the premises, but no serious attempt was made to keep them out. The trial court held that the Army had used reasonable means to clear the area and concluded that it had no further duty to a person who entered the reservation for his own purposes and benefit. The Court of Appeals sustained a judgment for the United

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July 24, 1962

States, commenting that for the plaintiff to recover he would have to establish that the agents of the United States knew that a dangerous condition existed which caused the injury in the circumstances. Elaborating this point, the court emphasized that when the agency decontaminated the area it relied upon existing records which did not indicate that booby traps should be expected at the point where the injury actually occurred. It seems to me that this might be significant for us because so far we have found no useful records.



## **Appendix 5**

**Memorandum to Charles C. Campbell, Area Manager, Los Alamos Area Office from James P. Hogan, Counsel, Los Alamos Area Office, "Report of Investigation Concerning Bazooka Explosion," August 14, 1962**

# Memorandum

TO : Charles C. Campbell, Area Manager DATE: August 14, 1962  
Los Alamos Area Office

FROM : James P. Hogan, Counsel  
Los Alamos Area Office

SUBJECT: REPORT OF INVESTIGATION CONCERNING BAZOOKA EXPLOSION  
LC:JPH

Applicable AEC Manual provisions, Appendix 0502 C.1.d. and Appendix 0703-022 d., indicate that accident reports should contain estimates of the amounts, probability and validity of claims against the Government. In a memorandum dated July 24, 1962, I furnished you an analysis of possible claims against the Government which may arise out of the July 14 bazooka explosion.

The investigating committee has agreed that it would be appropriate for me as its Chairman, and as the Area Office Counsel, to formulate the opinion about the probability, validity and amount of claims. I now do so:

It is my opinion, which remains unchanged since July 24, 1962, and which is based upon the Committee's findings, upon its general impression of all the mass of evidence it has received, and upon the applicable law, that

- a. claims against the Government for personal injuries and death may be reasonably anticipated;
- b. the claims will be valid in the sense that they will not be capricious and their resolution will probably turn upon the court's evaluation of subjective knowledge to be inferred from provable facts. I believe that the facts, so evaluated, could result in judgments against the Government;
- c. the total amount of the claims may fall between \$250,000 and \$350,000.

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Charles C. Campbell - 2 -

August 14, 1962

As support for these conclusions and opinions, I attach a copy of my July 24 memorandum which has been modified very slightly on pages 5 and 6.

Enclosure:

Cy memo fm Hogan to Campbell, dtd 7/24/62